

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LORAINÉ FINDLEY,

Plaintiff,

-against-

No. 23-CV-00946-LTS-RFT

HENRY J. CARTER,

Defendant.

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ORDER

Defendant Henry J. Carter has filed at docket entry no. 78 a memorandum of law and declaration seeking the dismissal of Plaintiff Loraine Findley's Complaint. The Clerk's Office is directed to strike this improperly docketed pleading, without prejudice to its refile in accordance with the requirements of SDNY Local Rule 7.1, SDNY ECF Rule 15, and the undersigned's Individual Practices. Because the purported Rule 12 motion is accompanied by a declaration, the parties are notified that, if it is refiled in a manner that relies on matters outside of the Complaint, the Court will likely treat the motion as one for summary judgment and so notify the parties in accordance with Federal Rule of Civil Procedure 12(d).

The Court notes that there is pending a motion by Plaintiff to dismiss Defendant Carter's counterclaim (docket entry no. 55), to which no response appears on the docket. Any application showing good cause for leave to file an untimely response must be filed by **May 24, 2024**. If no such application is filed, or if the application is denied for failure to show good cause, the motion will be decided based on the opening papers.

SO ORDERED.

Dated: New York, New York
May 15, 2024

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge